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No. 832

IN THE  
Supreme Court of the United States

OCTOBER TERM, 1946.

IN THE MATTER OF  
ELLA H. TINKOFF, Debtor.

ELLA H. TINKOFF, Debtor, and PAYOFF  
TINKOFF, Trustee,

Appellants,

vs.

BEN GOLD, Trustee, LOUIS GOREN, Attorney  
for Trustee; DAVID STORAGE & MOVING  
COMPANY, a corporation, WAREHOUSE-  
MAN; MARTIN WARD, Referee in Bank-  
ruptcy; SHIPMAN, RAMAN & MOYE Court  
Reporters; and A. J. MENDELSON, As-  
sessment,

Appellees.

PETITION FOR REHEARING.

PAYOFF TINKOFF,  
ELLA H. TINKOFF,  
*Attorneys Pro Se*  
6353 N. Clark St.,  
Chicago, Illinois.  
Hol. 5533.

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**Supreme Court of the United States**

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Appellees.

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**PETITION FOR REHEARING.**

*To The Honorable, The Chief Justice And Associate*

*Justices of the Supreme Court of the United States:*

Now come Ella H. Tinkoff, Debtor, and Paysoff Tinkoff, Claimant, appearing *pro se*, and herewith present their Petition for Rehearing in the above entitled cause, and respectfully allege that this Court overlooked the principal grounds relied upon by Petitioners for their Writ of Cer-

tiorari, which was denied by this Court on February 10, 1947, and in support thereof your Petitioners allege:

1. That Petitioners in their Petition for Certiorari, filed with this Court, have made serious charges against the Trustee, Ben Gold, and his attorney, Louis Cohen, and also the Warehouseman, David Storage and Moving Company, and the Auctioneer, Albert J. Mendelssohn, all of which charges have not been denied by the interested parties, the Appellees herein. In fact, the Trustee and his attorney have not filed any answer to the said Petition for Certiorari with the exception of the Warehouseman, who has filed a summary answer without denying any of the allegations made therein.

2. The admission of these charges that the Trustee and his attorney were in collusion with the Warehouseman and the auctioneer and his attorney, would be sufficient to show the perpetration of a fraud upon the Court, which would automatically deprive the Trustee and his attorney of any fees in this proceeding, because of the want of disinterestness, and the exercise of bias and prejudice against the Petitioners, Ella H. Tinkoff, Debtor, and Paysoff Tinkoff, Claimant.

3. The Constitution of the United States jealously guards the rights of each person to the use and enjoyment of his property, and it is common knowledge that if a person takes property from another with a threat to kill with a gun, that such action is called armed robbery, and is illegal, and that title to such property does not pass.

4. Yet, if a Court enters an erroneous order, contending that a person's property belongs to another, without granting a hearing, or the taking of evidence of any kind, yet the

law regards such action as legal, on the ground that the order of a Court imports verity, and casts the burden upon the losing party to show that the order is erroneous or illegal, and this burden is an onerous one because; first, knowledge of Appellate Practice is necessary to perfect an appeal; and second, that great expense is incidental to carry on an appeal.

5. The Petitioners find themselves in the latter position; that their property, which has a value in excess of \$90,000.00, has been taken from them by an order of the Court, without granting a hearing, or hearing any evidence whatsoever in regard thereto; and the further fact that the Appellate Court has made findings of fact wholly unsupported by the record, importing that hearings have been held to support the orders of the Trial Court.

6. The Petitioners feel that they have a Constitutional right to be heard before this Court and other Courts, the same as any other person in the United States; and the fact is apparent that the Petitioners' right to be heard has been greatly curtailed because of the disbarment of Paysoff Tinkoff, one of the Petitioners herein, which evidently has lead other Courts, and probably this Court, to feel that any allegations, no matter how true, if made by Paysoff Tinkoff, should not be given any credence, consideration or weight.

7. The fact of the disbarment is the reason why the Petitioner, Paysoff Tinkoff, is very careful of the allegations and charges made by the Petitioners, especially against Ben Gold, the Trustee, and Louis Cohen, his attorney, who were officers of the Court, and who, as officers of the Court, from the very time of their appointment and prior to the filing of their bonds, controlled, supervised, conducted and

guided the entire proceedings in this case,—instead of the parties in interest,—to the prejudice of your Petitioners, and who had openly threatened your Petitioners “*to see them in their graves first*” if the Petitioners did not go along with the Trustee and his attorney.

9. We have further, the anomalous situation of a Court of Bankruptcy, sitting as a Court of Equity, appointing officers of the Court to contest the right of the Petitioners to have a hearing in the Court, and to force the Petitioners to pay such hostile officers of the Court compensation for depriving Petitioners of their rights; and, as stated by the said officers of the Court, to “see them (the Petitioners) in their graves first”.

10. This Court, and the Courts below have held this to be justice, and to uphold, as a proposition of law, that a Court of Equity can appoint a person personally biased, hostile, and prejudiced against a Petitioner,—and in fact an enemy—as the Petitioner’s representative, and force the Petitioner to pay such hostile enemies fees so as to deprive the Petitioners of their rights. Such justice never existed, even in the ancient days, and this Court and the prior Courts have approved this procedure, under this present Constitution, in this age of democracy.

11. The Petitioners have gone into great detail in their Petition for Certiorari to show this Court the errors of law committed by the Trial Court and the Circuit Court of Appeals, especially the misapplication of the various decisions of this Court by the said Courts, and in particular the misapplication of the case of *Eyster v. Gaff*, 91 U. S. 521, in holding that a State Court has concurrent jurisdiction with a Bankruptcy Court after the State Court has notice of the institution of the bankruptcy proceedings, and

after a restraining order or stay order has been issued by the Bankruptcy Court.

12. Petitioners feel that a great injustice has been done in this proceeding. That their entire life's savings have been taken from them without granting them an opportunity to be heard; and, as alleged in the Petition, and as shown by the record, *not one iota of evidence was taken in this proceeding on any matter other than the question of supporting the Trustee's motion to dismiss,—and, which Trustee had no right to take part in this proceeding in favor of any interested party.*

13. The Circuit Court of Appeals in its decisions have repeatedly held that hearings were had, evidence was taken, and the rights of the Petitioners were concluded. Such a flagrant error can only be called to this Court's attention and hope that this Court, in the interest of justice and fair play, will not allow any prejudice against the Petitioner due to his disbarment, which evidently influenced the lower courts, to influence this Court's decision in endeavoring to determine the property rights of the Petitioners herein.

14. The Circuit Court of Appeals has held in its decision in substance that this proceeding was prolonged by the dilatory tactics of the Petitioners. Yet, an examination of the record will show that during the five years this proceeding was pending, the Trustee contested every motion made by the Petitioners, that the Trustee perfected every appeal and that the Trustee did everything humanly possible to terminate the proceedings long prior thereto, but that the Trial Court in September, 1941 reversed an order of the Referee dismissing the proceedings pursuant to an order prepared by the Trustee, and the Petitioners are charged with the delay in terminating this proceeding because the

Trial Court in September, 1941 reversed the order of the Referee to dismiss the proceedings and start the proceedings anew. Yet the record conclusively shows that not one iota of evidence was taken to support Petitioners numerous motions, and that the only motions allowed were those of the Trustee.

15. Your Petitioners have endeavored to obtain other counsel to handle this proceeding in this Court, and not only were your Petitioners unable to obtain such counsel due to their inability to obtain a reasonable arrangement regarding compensation, but that some of the said attorneys refused to consider the proposition solely for the reason that they felt that their reputation would be prejudiced due to the disbarment of the Petitioner, Paysoff Tinkoff.

16. Petitioners are only asking to have their day in Court, and to be given a fair and impartial hearing. This has been repeatedly denied your Petitioners, although the Courts have held to the contrary, without anything to support their findings, and although the Constitution guarantees to your Petitioners a fair and impartial hearing, the record in this case conclusively shows that your Petitioners have not been granted any hearing (1) *to determine the validity of the Warehouseman's Lien*, and (2) *to determine whether the Trustee and his attorney were impartial and disinterested, and were illegally appointed*, and whether they were legally entitled to compensation.

17. Petitioners again urge this Court to determine the question whether a State Court has concurrent jurisdiction with a Bankruptcy Court in regard to property of a bankrupt, after the institution of the bankruptcy proceedings; and further whether the decision in the case of *In Re Ella H. Tinkoff*, 141 F. (2) 731, is overruled by the decision in the



case of *In Re Peer Manor Building Corp.*, 153 F. (2) 803, and whether *In re Ella H. Tinkoff Debtor*, 156 F. (2) 405, is contrary to 153 F. (2) 803; and whether the case of *Eyster v. Gaff*, 91 U. S. 521, is overruled by the cases of *Isaacs v. Hobbs Tie and Timber Co.*, 284 U. S. 174, and *Gross v. Irving Trust Co.*, 289 U. S. 242.

Wherefore, Petitioners pray that an order be entered by this Court granting a rehearing in this proceedings, and vacating and setting aside the order entered by this Court denying the Petition for Certiorari on February 10, 1947.

Respectfully submitted,

ELLA H. TINKOFF, *Debtor*,  
 PAYSOFF TINKOFF, *Claimant*,  
*Appellants, Pro Se.*

#### Certificate of Counsel.

Paysoff Tinkoff and Ella H. Tinkoff, Petitioners herein, appearing pro se, hereby certify that the foregoing Petition for Rehearing in this cause is presented in good faith, and not for the purpose of delay.

ELLA H. TINKOFF  
 PAYSOFF TINKOFF